

² See Pub. L. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

delivery market.³

While PSA primarily represents the interests of its members with respect to competitive products, our members also mail substantial volumes of market dominant products such as catalogues. A healthy market dominant product line from the Postal Service is important to us not just because our members use the services, but also because these products help fund the substantial shared Postal Service costs necessary to maintain the universal delivery network that our members depend on to deliver their products to their customers. This was recognized in a report from the Office of Inspector General earlier this month.⁴

PSA together with other parties has filed joint comments that conclude “the rate setting procedure Congress established in 2006 has worked, is working and will work. This procedure is far, far superior to the cost of service administrative procedure of the 1970 Act. We urge the Commission to continue unchanged the PAEA rate setting process and procedures.”⁵ The process and procedures and the price cap system required by law for the initial system implemented by the Commission have indeed worked well. There is no need to change these processes and procedures. There is no

³ See, e.g., Docket No. R2013-11, Reply Comments of the Parcel Shippers Association, Dec. 6, 2013, at 3; see also Report on Universal Postal Service and the Postal Monopoly, Docket No. PI2008-3, Reply Comments of Parcel Shippers Association, August 4, 2008, at 2 (“PSA agrees that, as suggested by others, the Postal Service should be given substantial flexibility with respect to competitive products to adapt to market forces and compete on a level playing field.”); see also Review of the Treasury Report, Docket No. PI2008-2, Comments of Parcel Shippers Association on Treasury Report, April 1, 2008, at 10 (“The overriding purpose of the PAEA in the competitive market was to level the competitive playing field: ‘Our bill has the primary goal of allowing the Postal Service to continue to fulfill its universal service mission at a reasonable cost. To achieve this goal, the legislation establishes a modern system for regulating rates, gives needed flexibility to the Postal Service, and includes provisions to ensure a level playing field for the Postal Service and its competitors.’ Statement for the Markup of the Postal Accountability and Enhancement Act House Committee on Government Reform by Rep. Henry A. Waxman (May 12, 2004).”)

⁴ See, Office of the Inspector General, United States Postal Service, *Examining Changes In Postal Product Costs*, RARC-WP-17-005 (March 13, 2017) p 5, (“More interesting is the impact of overall volume, as it shows that the decline in letters has led to an increase in the unit cost of parcels. Isolating this impact results in a unit cost increase of 11.5 cents (6.3 percent). This may mean that to remain competitive in package delivery, under its current strategy, the Postal Service needs to retain as much of its non-package volumes as possible.”)

⁵ Docket No. RM2017-3, Comments of the Data & Marketing Association (DMA), American Catalog Mailers Association (ACMA), American Forest & Paper Association (AF&PA), Association for Postal Commerce (PostCom), Envelope Manufacturers Association (EMA), Greeting Card Association (GCA), Idealliance, Parcel Shippers Association (PSA), and Saturation Mailers Coalition, at 1. (Joint Parties’ Comments).

need to modify the “rate setting structure.”⁶

But no system is perfect. There are at least three areas where changes could be made so that the system better meets the PAEA’s Objectives, and another where it is important that no change be made.

The Price Cap System

There is no need, and it would be unwise, to adopt an “alternative system” as the Commission could do pursuant to 39 U.S.C. 3622(d)(3). As the Joint Parties’ Comments note (at 2):

[The Price Cap System] has produced results and real positive benefits for consumers, businesses and nonprofit organizations. Prior to PAEA rates were established under cost of service pricing where costs were simply passed on to mail users through higher rates. Under PAEA that is no longer true. USPS has been required to keep operating costs under control. PAEA has worked. We are concerned, however, that USPS cost cutting efforts have slowed in recent years, as noted by the Government Accountability Office. Eliminating the cap would be counterproductive as the incentives for USPS to reinvigorate such efforts would be reduced.

Objective 1 directs that the modern ratemaking system shall “maximize incentives to reduce costs and increase efficiency.” 39 U.S.C. 3622(b)(1). Experience shows that under the initial price cap system the Postal Service has reduced costs and increased efficiency.

During the last decade, we have responded aggressively to the challenges that confronted us. For example, in response to the sharp decline in mail volume, we right-sized our operations, increased workforce flexibility, and established a more affordable, two-tiered wage system. These efforts have resulted in cost savings of approximately \$14 billion annually. We also are proud of our achievements in growing our package business, and implementing innovations that have enhanced the value of the mail to better serve our customers.⁷

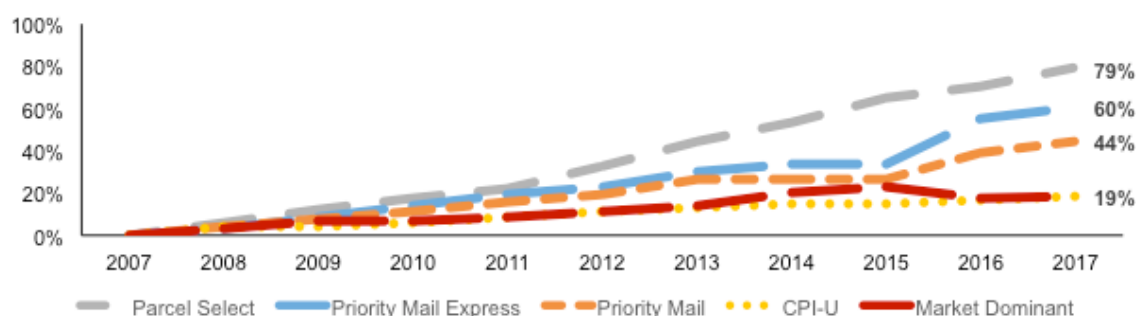
It is unlikely these cost reductions and efficiencies would have been achieved absent the discipline imposed by the price cap system. The importance of this discipline will only grow as opportunities for network-wide cost reduction continue to become scarce.

⁶ See *Id.* at 1.

⁷ *Testimony of Postmaster General Megan Brennan before the House Committee on Oversight and Government Reform*, at 2 (Feb. 7, 2017)

Objective 2 stipulates that the system shall “create predictability and stability in rates.” 39 U.S.C. 3622(b)(2). Except for the disruption caused by the exigency price increase experience, the timing of price adjustments has been very predictable and compared to those for the uncapped competitive products prices have been stable. See, Chart 1.

CHART 1
PRICE CHANGES FOR SELECTED PRODUCTS AND
CHANGES IN THE PRICE CAP (CPI-U)
(2007-2017)



Objective 5 provides that the system for regulating market dominant products should “assure adequate revenues, including retained earnings, to maintain financial stability.” 39 U.S.C. 3622(b)(5). It is not clear that the index (CPI-U) used to establish the price cap under the initial system is the appropriate index assure adequate revenues. This is an area for further examination.

Objective 8 directs the Commission “to establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.” 39 U.S.C. 3622(b)(8). Factor 2 provides, “the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable” to that class or type. 39 U.S.C. 3622(c)(2). Through the annual compliance process the Commission has repeatedly

determined, most recently in ACD 2015, that one class of mail is not bearing the direct and indirect postal costs attributable to it.⁸ It is being subsidized. Taking Factor 2 into account, the Commission could conclude it is not maintaining a just and reasonable rate schedule requiring a change in the price cap index or in the application of the cap.

Worksharing

Returning to Objective 1 (“maximize incentives to reduce costs and increase efficiency”), in addition to cost reductions and efficiencies driven by the price cap, there are opportunities to *maximize* efficiencies through better regulation of workshare discounts. Workshare discounts provide reduced rates for mailers based on the Postal Service costs avoided because of the mailer performing an activity that would otherwise be performed by the Postal Service. Proper workshare discounts are important to PSA members who mail catalogues. Current discounts for dropship discounts for Standard Mail (Marketing Mail) flats (both for the Flats and Carrier Route product) are below costs avoided.⁹

Under the PAEA, the Commission must review workshare discounts to ensure that the discounts do not exceed the Postal Service’s avoided costs, subject to limited exceptions. See, 39 U.S.C. 3622(e)(2). The Commission has said that “[l]egally, workshare discounts are only bound by this ceiling; the Postal Service is not bound by this provision to increase a workshare discount that is less than avoided costs.” But although the law, *i.e.* section 3622(e), expressly establishes only a ceiling, the Commission has the authority, especially in this rulemaking, to adopt a rule establishing a cost-based “floor” on workshare discounts. And it should.

Requiring that discounts be set equal to avoided costs would promote efficiency by ensuring that work is performed by the least cost provider. Discounts set at less than avoided cost result in the Postal Service performing work that can be better performed

⁸ See Docket No. ACD2015, Annual Compliance Report Fiscal Year 2015 at 42 (“Since the enactment of the PAEA, Periodicals cost coverage has declined from 83.0 percent. As Table III-1 illustrates, this low cost coverage has resulted in cumulative negative contribution of almost \$5 billion since FY 2007.”)

⁹ See United States Postal Service, *Annual Compliance Report Fiscal Year 2016*, Workshare Discounts and Benchmarks--Standard Mail Flats Dropshipping (Commercial and Nonprofit) at USPS-FY16-3 (Dec. 29, 2016)

by the private sector and maintaining an inappropriately large network.

A shift in focus from [cost-based] price signals designed to drive the lowest combined costs to prices [based upon less-than-full passthroughs] geared to promote the use of excess capacity is problematic. First, it is a substantial and inappropriate departure from the long-standing pricing policy that has resulted in enhanced economic efficiency for both the mailing industry and the Postal Service. Second, it suggests the use of the Postal Service's monopoly position to engage in a form of exclusionary pricing – discouraging the most efficient providers from performing upstream services (e.g., sortation and transportation) at lower cost. Prices that encourage work to be performed by the least cost provider (i.e., whether that provider be a mailer, mail service provider, or the Postal Service) are efficient and allow the Postal Service to size its infrastructure appropriately. In contrast, inefficient prices designed to make work for the Postal Service will result in too large a network [and] higher costs to mailers.

Docket No. R2012-3, Joint Comments of the Direct Marketing Association, Inc., the Mailing and Fulfillment Service Association, the Major Mailers Association, the National Association of Presort Mailers, the National Postal Policy Council, and the Parcel Shippers Association (November 7, 2011) at 3.

A Commission rule requiring that workshare discounts be set equal to avoided costs would provide additional incentive for the Postal Service to reduce costs and increase efficiency.

Administrative Burden and Transparency

Objective 6 provides that the system should “reduce the administrative burden and increase the transparency of the ratemaking process.” 39 U.S.C. 3622(b)(6). Despite complaints of some Postal Service competitors, PSA believes that the Postal Service is very transparent, disclosing a massive amount of information, much more than its competitors disclose, each year as part of the annual compliance process and when it files rate adjustments. While this objective does not apply to the ratemaking system for competitive products, PSA believes that the Commission has also properly balanced disclosure and oversight for competitive products.

PSA believes the Commission, generally, has struck an appropriate balance between disclosure and oversight in its rules. This involves

combining substantial disclosure of competitive product information (under seal) to the PRC with more limited public disclosure.

Docket No. ACR 2013, Reply Comments of the Parcel Shippers Association (February 14, 2014) at 5.

The correct approach to transparency is important for competitive product NSAs. A major success of PAEA has been that, consistent with the practice of Postal Service competitors of negotiating customized deals with its customers, the competitive rate system allows the Postal Service the freedom to negotiate competitive product NSAs with its customers. Indeed, the Commission has approved hundreds of domestic NSAs under the PAEA.

Critical to the success of competitive product NSAs has been the Commission's vigilance in keeping the contents of these agreements confidential. PSA continues to believe that Commission review of NSAs, filed under seal, provides an appropriate balance that ensures statutory compliance while allowing the Postal Service to compete on an even footing with its competitors.

Flexibility to negotiate and implement deals must include rules that minimize the amount of information that must be publicly disclosed. Undue disclosure will not only put the Postal Service at a competitive disadvantage by allowing its competitors to undercut the negotiated prices, but also deter private companies from doing deals with the Postal Service out of fear that confidential, commercially sensitive information will be made public.

Docket No. RM2007-1, Comments of the Parcel Shippers Association (April 6, 2007) at 22.

In several recent dockets interested parties have requested and been granted access, subject to protective conditions, to a substantial amount of non-public material regarding Postal Service costs.¹⁰ PSA has no issue with this; this is how the system should work. The bar for justifying access to customer-specific NSA information, however, should be much higher.

¹⁰ See, e.g., Docket No. ACR2014, PRC Order No. 2321, Order Granting Request for Access (January 15, 2015); Docket No. RM2015-7, PRC Order No. 2326, Order Granting Motion for Access to Non-Public Material (February 24, 2015); Docket No. ACR2015, PRC Order No. 3033, Order Granting First Motion for Access (January 15, 2016).

Allocation of Institutional Cost

Objective 9 provides that the system should “allocate the total institutional costs of the Postal Service appropriately between market dominant and competitive products.” 39 U.S.C. 3622(b)(9).

It is important to note that the PAEA specifically prohibits “cross subsidization” of competitive products. See, 39 U.S.C. 3633(a)(1) and (2). The Commission reviews this annually through the compliance process. Additionally, the Commission is in the process of reviewing the minimum contribution requirement for competitive products. See Docket No. RM2017-1. These processes have worked well,¹¹ and there is no need to address this matter in the current rulemaking.

In Docket No. RM2017-1, a coalition of market dominant mailers and competitive shippers said this:

All of us urge the Commission to eliminate the minimum contribution requirement.

This requirement is unnecessary to promote a level playing field between the Postal Service and its competitors, prohibit cross subsidization, or ensure that competitive products pay an appropriate share of the Postal Service’s institutional costs. Indeed, the requirement is now an irrelevant anachronism: the contribution to institutional costs earned by the Postal Service from competitive products has far outstripped the 5.5 percent minimum established in 2007. Moreover, increasing the minimum contribution requirement enough to influence competitive product prices could harm the Postal Service, its customers, and American consumers. Even leaving the required minimum contribution in place at its current level would be a needless invitation to mischief.¹²

Conclusion

The process and procedures and the price cap system implemented in 2007 have

¹¹ The contribution of competitive products has grown substantially under PAEA to 16.5% of institutional costs.

¹² Comments of Parcel Shippers Association et al., PRC Docket No. RM2017-1 (Jan. 23, 2017) at--; The parties endorsing these comments were the Parcel Shippers Association, the Alliance of Nonprofit Mailers, the American Catalog Mailers Association, the Continuity Shippers Association, the Data and Marketing Association, the Envelope Manufacturers Association, the National Association of Presort Mailers, the National Newspaper Association, PSI Systems, and Stamps.com.

worked well. There is no cause for the Commission to adopt an alternative system of rates and classifications for market dominant products. The Commission, however, should explore changes in the areas discussed herein that could enable the system to better achieve objectives 1, 5, and 8, considering the appropriate factors.

Respectfully submitted,

By: /s/ James Pierce Myers

Pierce Myers
Executive Vice President & Counsel
PARCEL SHIPPERS ASSOCIATION
320 South West Street STE 110
Alexandria, Virginia 22314
703-627-5112
pierce@parcelshippers.org